IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.355 OF 1988.

The Commissioner of Income-tax,
Bombay City III, Bombay. ... Applicant.

V/s.

M/s M.A. Shah & Co. ... Respondent.

Dr. Prasad Daniel for the applicant.

None for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 11th July 2005.

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case and in law, the Income-tax Appellate Tribunal is justified in holding that there was no mistake apparent from record and the provisions of sec. 154 cannot be applied and consequently cancelling the assessment under sec. 154 of the Income-tax Act?"

. Heard learned Counsel appearing for the Department/Revenue. None for the respondent in spite of service.

. Learned Counsel appearing for the Revenue submits that the main controversy giving rise to the present issue has already been settled on merits by the Apex Court in the case of **Commonwealth Trust Ltd.vs. C.I.T. (1997) 228 ITR 1**; where the Apex Court has ruled that wherever the capital assets were depreciable and the assessee had availed of deduction on account of depreciation, the cost of acquisition had to be determined in terms of provisions of section 50(1) and Rule 48. The view taken by the Tribunal on merits is in consonance with the law laid down by the Apex Court as such there was hardly any mistake apparent on the face of record in the order of the Tribunal as such the Tribual was perfectly right in holding that there was no mistake apparent on face of record.

. In view of the above, the question referred is answered in the negative i.e. in favour of the revenue and against the assessee.

. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**